

**COMMISSIONERS**  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



**BRIAN C. MCNEIL**  
Executive Director

## **ARIZONA CORPORATION COMMISSION**

September 29, 2008

The Honorable Pete V. Domenici  
United States Senate  
328 Hart Office Building  
Washington, DC 20510

Dear Senator Domenici:

We, the members of the Arizona Corporation Commission (ACC), write to you in response to remarks you made earlier this summer regarding the implementation of the 2005 Energy Policy Act (EPAc 2005). At a hearing of the U.S. Senate Committee on Energy and Natural Resources, you asserted that the EPAc 2005 provided the Federal Energy Regulatory Commission (FERC) with "backstop" siting authority to counter NIMBY opposition to interstate lines in order to ensure adequate transmission and expressed concern with opposition that has since been voiced to the "backstop" authority. We understand the need to establish a reliable transmission grid nationwide, but share many of the concerns that have been voiced, including FERC's current interpretation of its new authority.

Our Commission firmly believes that the state of Arizona is in the best position to determine the need for transmission line projects in or through our state and the impact of such projects on the residents of our state and the regions' electrical transmission grid. We take this role seriously, as demonstrated by the public, judicial and rigorous fact finding process we use to evaluate all aspects of each transmission project application before approving or denying a project and our proven track record for approving transmission line projects. Any decision by FERC to intervene in the Arizona line siting process or to overturn an ACC decision that has been made in a timely manner after a careful consideration of the facts is inappropriate. A reliable transmission grid can be constructed without condoning a federal entity's usurpation of state authority if there are comprehensive and productive transmission planning and line siting processes in place at the state level as we have in Arizona. Both of these processes are described below.

### ***Transmission Planning***

Arizona employs a collaborative process for transmission planning. In 2000, the ACC initiated, pursuant to statute,<sup>1</sup> a Biennial Transmission Assessment (BTA) process that evaluates the adequacy of existing and planned transmission facilities in Arizona to reliably meet the present and future needs of Arizona customers. Additionally, extensive regional planning studies have been conducted in Arizona and the Western U.S. by transmission planning and government agency groups, including: the Southwest Area Transmission Regional Planning Group, which is

<sup>1</sup> Arizona Revised Statutes, §40-360.02(G)

composed of Arizona, New Mexico and parts of Southern California, West Texas, Southern Nevada and Southern Colorado, and WestConnect, which is composed of utility companies providing electric transmission in the Southwestern U.S. and works collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the western wholesale electricity market.

### ***Line Siting Process***

Arizona employs a rigorous line siting process that has been in place since 1971 when the Legislature enacted the Arizona Power Plant and Line Siting Committee Statutes, requiring the ACC to establish the Arizona Power Plant and Transmission Line Siting Committee (Committee).<sup>2</sup> The eleven-member Committee evaluates applications to build power plants of 100 megawatts or more and transmission projects of 115,000 volts or more in the state. It must hold a public hearing at which the applicant and any groups or individuals who are granted party, or intervenor, status testify and answer questions. At the end of the hearing, the Committee members vote on whether to grant the applicant a Certificate of Environmental Compatibility (CEC), which is a formal document that is necessary for the building of the power plant or transmission line. If granted, the CEC is then forwarded to the ACC for approval. If denied, the applicant may request the ACC to rehear the matter. Per statute and administrative regulation, the entire process must take no longer than 285 days; however, the clock may be stopped under certain circumstances, which may elongate the process.

In issuing a CEC, specific factors, including the environmental and economic impacts of the project, must be taken into consideration. The Committee can require a plant or transmission line to conform to certain conditions. Additionally, within the parameters of the law, the ACC can amend a CEC to include conditions it deems necessary to mitigate environmental impacts and enhance system reliability with overall consideration for the broad public interest. Such conditions, which involve design, construction and operating particulars that have been brought forward from the Committee and ACC reviews, ensure the need of a project is fairly weighed against the project's environmental impact.

### ***Recent Line Siting Activity***

The ACC has a history of pro-actively siting generation and transmission lines within Arizona—since the enactment of the relevant statutes, the ACC has decided 137 applications, denying only 4.<sup>3</sup> Since 1999, the ACC has sited approximately 14,803 megawatts of generation and 739 miles of transmission lines. Further generation and transmission line siting projects are pending.

---

<sup>2</sup> Although the core of the ACC's work is based on the powers and duties spelled out in the Arizona Constitution, plant and transmission line siting is an area of authority delegated to the ACC by the Arizona Legislature (Arizona Revised Statutes, Chapter 2, Article 6.2).

<sup>3</sup> This includes the Devers-Palo Verde No. 2 Project that Southern California Edison has proposed to construct from Arizona to California within the Southwest Area National Corridor. This project was vetted by our line siting process but did not receive ACC approval after a careful analysis of the costs and benefits the project would afford to the citizens of Arizona. An application for this project has now been pre-filed with FERC.



## *Conclusion*

In summary, the state of Arizona is in the best position to balance the need for a proposed transmission line with the impacts the line may have on Arizona residents and the region. History shows that Arizona's line siting process has been effective and cannot be characterized as obstructionist or provincial. While there may very well be some unjustified NIMBY behavior in parts of the U.S., the ACC is not afflicted with such a policy infirmity and, on the whole, neither are our colleagues in other state commissions. The ability of the Arizona Committee and ACC members to fulfill their statutory obligations is not enhanced by FERC's ability to overrule their reasonable and timely denials of a proposed project. On the contrary, the members are likely at a disadvantage in carrying out their responsibilities due to the added measure of uncertainty in the finality of their recommendations. Additionally, the conditional approval that is often part of our approvals is subject to renegotiation at FERC without the full benefit of the process used to arrive at those conditions.

We are aware there may be circumstances in which an applicant did not have access to a reasonable process. We certainly take no issue with a process to review such claims of an applicant with an attendant possibility of some form of federal action to address a legitimate and vetted claim of an unreasonable state-level process or, worse, no process at all. That said, we are all sensitive and aware of the tendency of government to move beyond such a narrow role. We remain concerned that what may have been intended to be a "backstop" role, will ultimately and effectively become primary, or de facto primary, authority. We urge Congress to clarify FERC's role as a true "backstop" authority.

Thank you for your attention to such an important issue as the state of the nation's transmission grid. We urge you to take our concerns into consideration as Congress continues to tackle this difficult issue.

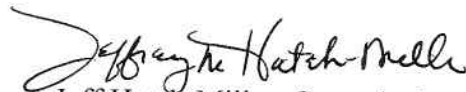
Sincerely,



Mike Gleason, Chairman



William A. Mundell, Commissioner



Jeff Hatch-Miller, Commissioner



Kristin K. Mayes, Commissioner



Gary Pierce, Commissioner